

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Adv. Pro. No. 08-01789 (SMB)

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

SIPA LIQUIDATION

(Substantively Consolidated)

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Adv. Pro. No. 09-1503 (SMB)

Plaintiff,

v.

THE ESTATE OF MARK D. MADOFF, ANDREW
H. MADOFF, individually and as Executor of the
Estate of Mark D. Madoff, and STEPHANIE S.
MACK.

Defendants.

**STIPULATION AND ORDER EXTENDING DEADLINE TO SUBSTITUTE DAVID
BLUMENFELD FOR THE ESTATE OF MARK MADOFF AND MARTIN
FLUMENBAUM AND THE ESTATE OF ANDREW MADOFF FOR DECEASED
DEFENDANT ANDREW MADOFF IN THIS PROCEEDING**

WHEREAS, on October 2, 2009, Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") and the substantively consolidated estate of Bernard L. Madoff, filed a complaint in the above-captioned

adversary proceeding;

WHEREAS, the Trustee subsequently filed an Amended Complaint and a Second Amended Complaint (the “SAC”) in the above-captioned adversary proceeding, on November 7, 2011 and May 4, 2012, respectively;

WHEREAS, the SAC presently remains the operative complaint in the above-captioned proceeding, but on July 15, 2014, the Trustee filed a motion for leave to amend the SAC and to file a Third Amended Complaint;

WHEREAS, the Trustee’s motion for leave to amend the SAC was opposed by the Estate of Mark D. Madoff and Andrew H. Madoff, individually and as Executor of the Estate of Mark D. Madoff, on August 12, 2014;

WHEREAS, the parties subsequently entered into a Stipulation, So Ordered by this Court on October 6, 2014, setting the following briefing and hearing schedule on the Trustee’s motion for leave: the Trustee shall reply on or before January 16, 2015; the defendants Estate of Mark D. Madoff and Andrew H. Madoff shall have until February 6, 2015 to file a sur-Reply; and the hearing on the motion will be held on February 25, 2015;

WHEREAS, Defendant Mark D. Madoff passed away on December 11, 2010;

WHEREAS, counsel for Mark D. Madoff filed a Statement Noting Death of Defendant Mark D. Madoff on February 2, 2011;

WHEREAS, Andrew H. Madoff and Bernard L. Madoff were designated the Executors, and Peter B. Madoff the Successor Executor, of the Estate of Mark D. Madoff under Mark D. Madoff’s Last Will and Testament dated November 1, 2007 (the “Mark Madoff Will”);

WHEREAS, Bernard L. Madoff was disqualified from serving as Executor due to his felony conviction, and Peter B. Madoff renounced serving as Executor by his December 21,

2010 Renunciation of Nominated Executor and/or Trustee;

WHEREAS, on December 17, 2010, Andrew H. Madoff petitioned the New York State Surrogate's Court, New York County ("Surrogate's Court"), for Probate and Letters Testamentary and of Trusteeship in the Probate Proceeding No. 2011-39 entitled Probate Proceeding, Will of Mark David Madoff, aka Mark D. Madoff;

WHEREAS, on April 1, 2011, Surrogate's Court Judge Nora S. Anderson issued a Decree Admitting Will to Probate, pursuant to which Letters Testamentary and of Trusteeship were directed to be issued to Andrew H. Madoff;

WHEREAS, pursuant to a Stipulation, So Ordered by this Court on April 19, 2011 (Dkt. No. 47), the Estate of Mark D. Madoff and Andrew H. Madoff, as Executor of the Estate, were substituted for Mark D. Madoff in the above-captioned adversary proceeding;

WHEREAS, Defendant Andrew H. Madoff passed away on September 3, 2014;

WHEREAS, Martin Flumenbaum was designated as the Executor of the Estate of Andrew H. Madoff under Andrew H. Madoff's Last Will and Testament, dated July 8, 2014;

WHEREAS, on September 10, 2014, Martin Flumenbaum petitioned the Surrogate's Court for Probate and Letters Testamentary and of Trusteeship in the Probate Proceeding No. 2014-3416 entitled Probate Proceeding, Will of Andrew Madoff aka Andrew H. Madoff;

WHEREAS, on September 12, 2014, The Honorable Nora S. Anderson issued a Decree Admitting Will to Probate in the Probate Proceeding No. 2014-3416 entitled "Probate Proceeding, Will of Andrew H Madoff, aka Andrew Madoff," pursuant to which Letters Testamentary and of Trusteeship were directed to be issued to Martin Flumenbaum;

WHEREAS, Andrew Madoff designated David Blumenfeld as the Successor Executor of the Estate of Mark D. Madoff in a Designation of Successor Executor filed with the Surrogate's

Court on December 29, 2012, pursuant to the authority granted to him under Section A, Article 10 of the Mark Madoff Will;

WHEREAS, on October 27, 2014, David Blumenfeld petitioned the Surrogate's Court for Successor Letters Testamentary and appointment as the Successor Executor of the Estate of Mark Madoff, as a result of Andrew Madoff's death;

WHEREAS, on November 21, 2014, Surrogate's Court Judge Nora S. Anderson directed that Letters Testamentary be issued to David Blumenfeld, as Successor Executor of the Estate of Mark D. Madoff;

WHEREAS, David Blumenfeld, a formal representative of Mark Madoff's Estate, is a proper party to substitute for the Estate of Mark Madoff in this proceeding pursuant to Rule 25 of the Federal Rules of Civil Procedure and Rule 7025 of the Federal Rules of Bankruptcy Procedure;

WHEREAS, Martin Flumenbaum, a formal representative of Andrew Madoff's Estate, is a proper party to substitute for deceased defendant Andrew Madoff in this proceeding pursuant to Rule 25 of the Federal Rules of Civil Procedure and Rule 7025 of the Federal Rules of Bankruptcy Procedure;

WHEREAS, Rule 25 of the Federal Rules of Civil Procedure, applicable to this adversary proceeding pursuant to Rule 7025 of the Federal Rules of Bankruptcy Procedure, provides: "If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed";

WHEREAS, the 90-day time period will expire on December 2, 2014;

WHEREAS, Federal Rule of Bankruptcy Procedure 9006(b)(1), adapts Federal Rule of Civil Procedure 6, and provides: “when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order . . .”; and

WHEREAS, the parties are engaged in settlement discussions and negotiations.

IT IS HEREBY STIPULATED AND AGREED that:

1. The period during which substitution of David Blumenfeld, as the Successor Executor of the Estate of Mark D. Madoff, for Andrew H. Madoff, the previous Executor of the Estate of Mark D. Madoff in the above-captioned adversary proceeding shall be permitted is extended pursuant to Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure to February 2, 2015.

2. The period during which substitution of the Estate of Andrew H. Madoff and Martin Flumenbaum, as Executor of the Estate of Andrew H. Madoff, for deceased defendant Andrew H. Madoff in the above-captioned adversary proceeding shall be permitted is extended pursuant to Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure to February 2, 2015.

3. David Blumenfeld acknowledges and agrees that as Successor Executor of the Estate of Mark Madoff he is a proper party for substitution and hereby waives any and all objections to his substitution for the Estate of Mark Madoff in this proceeding.

4. Martin Flumenbaum acknowledges and agrees that as Executor of the Estate of Andrew Madoff he is a proper party for substitution and hereby waives any and all objections to his substitution for deceased defendant Andrew Madoff and the Estate of Andrew Madoff in this

proceeding.

5. This Stipulation and Order is intended by all parties hereto to be solely for the purpose of extending the time for substituting the correct parties to comply with Rule 25 of the Federal Rules of Civil Procedure and Rule 7025 of the Federal Rules of Bankruptcy Procedure. Except as set forth in Paragraphs 3 and 4 above, the parties to this Stipulation and Order reserve all rights, claims and/or defenses they may have and entry into this Stipulation and Order shall not impair or otherwise affect any such rights, claims and/or defenses.

6. The Estate of Mark D. Madoff and David Blumenfeld are deemed to have accepted service of the Trustee's SAC and all other filings in the above-captioned adversary proceeding made prior to the date of this Stipulation.

7. The Estate of Andrew H. Madoff and Martin Flumenbaum as Executor of the Estate are deemed to have accepted service of the Trustee's SAC and all other filings in the above-captioned adversary proceeding made prior to the date of this Stipulation.

8. This Stipulation and Order may be executed in counterparts and original signatures are not required as copies or facsimile of executed counterparts of this Stipulation are deemed an original and binding.

9. This Stipulation and Order may be executed in any number of counterparts and all such counterparts shall together constitute one and the same agreement.

Dated: December 1 2014
New York, New York

BAKER & HOSTETLER LLP

BY: /s/ David J. Sheehan
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Lauren J. Resnick
Email: lresnick@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee for the
substantively consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and the estate of Bernard L. Madoff*

MARTIN FLUMENBAUM

BY: /s/ Martin Flumenbaum

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3191
Facsimile: (212) 492-0191
Martin Flumenbaum
Email: mflumenbaum@paulweiss.com
Andrew Ehrlich
Email: aehrlich@paulweiss.com

Executor of the Estate of Andrew H. Madoff

DAVID BLUMENFELD

By: /s/ David Blumenfeld

101 Whitney Lane
Old Westbury, New York 11568

Successor Executor of the Estate of Mark D. Madoff

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

BY: /s/ Andrew Ehrlich

1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3191
Facsimile: (212) 492-0191
Martin Flumenbaum
Email: mflumenbaum@paulweiss.com
Andrew Ehrlich
Email: aehrlich@paulweiss.com

Attorneys for Defendants the Estate of Andrew H. Madoff, Martin Flumenbaum, as Executor, and the

*Estate of Mark D. Madoff, David Blumenfeld as
Executor*

COOLEY LLP

BY: /s/ Laura Grossfield Birger
The Grace Building
1114 Avenue of the Americas
New York, New York 10036-7798
Telephone: (212) 479-6079
Facsimile: (212) 253-4284
Laura Grossfield Birger
Email: lbirger@cooley.com

Attorneys for Defendant Stephanie S. Mack

SO ORDERED:

Dated: December 1, 2014
New York, New York

/s/ STUART M. BERNSTEIN
HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE